**The School Law Blog**

Justices Decline Case on Tuition Benefit for Immigrants   
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The U.S. Supreme Court on Monday declined to take up a challenge to a California law that provides in-state college tuition rates to undocumented immigrant students who have attended high school in the state for three years.

The 2001 state law was challenged on behalf of a class of U.S. students paying out-of-state tuition rates at California colleges and universities. Their suit alleged that the state law conflicts with a 1996 federal immigration statute that contains a provision barring states from providing in-state tuition rates to unlawful aliens unless they provide the same rates to U.S. students from any state.

The Washington-based Immigration Reform Law Institute, which brought the suit, says in court papers that nine other states have similar laws.

"Action by this court is needed to ensure that more states do not follow California's policy of calculated defiance and thwart Congress's intent to deny residence-based postsecondary education benefits to illegal aliens," the institute said in its Supreme Court appeal in Martinez v. Regents of the University of California (Case No. 10-1029).

The institute was appealing a November 2010 decision of the California Supreme Court that the state statute did not conflict with the federal immigration law. Rather than conferring in-state tuition benefits based on "residence," the statute provided the benefits based on high school attendance and graduation in the state, the state high court said.

The California high court said that many nonresident students qualify for in-state tuition under the state's law, including children who attend boarding schools in California and those who attended three years of high school in the state but moved before graduation.

The state's "criteria are not the same as residence, nor are they a de facto or surrogate residency requirement," the California Supreme Court said.  
The Immigration Reform Law Institute, in its appeal, called that interpretation "implausible."

"Congress could not have intended to allow states to play semantic games in order to give resident tuition to illegal aliens," the institute said. "Congress intended to deny illegal immigrants resident tuition rates."

The group points out that resident tuition is substantially less expensive than out-of-state rates; at the flagship University of California at Berkeley, for example, resident tuition is some $6,230 per semester, compared with $17,670 for non-residents.

California's Board of Regents urged the justices in a brief not to take up the case, saying among other things that there was no conflict among the federal courts of appeals on the issue.

The Supreme Court declined the immigration group's appeal on June 6 without any comment.

Appeals Court Lifts Ban on Graduation Prayers   
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Student speakers and others offered numerous prayers at a Texas high school graduation on Saturday after a federal appeals court dissolved a lower court's order that would have prohibited organized prayers at the ceremony.

"Medina Valley graduates hear prayers aplenty," the San Antonio Express-News said in its coverage of the ceremonies at the high school in the Medina Valley Independent School District.

A local family had sued the school district late last month with the help of Americans United for the Separation of Church and State, challenging the district's plans to include a student invocation and benediction at the graduation as an unconstitutional government establishment of religion.

Last week, U.S. District Judge Samuel Frederick Biery, Jr., sided with the family, citing U.S. Supreme Court decisions such as Lee v. Weisman and Santa Fe Independent School District v. Doe.

"Plaintiffs are likely to succeed on the merits of their claim that the inclusion of prayers at Medina Valley High School graduation ceremonies violates the Establishment Clause of the First Amendment to the U.S. Constitution," Judge Biery said in a June 1 temporary restraining order and preliminary injunction. "Plaintiffs will suffer irreparable harm if the prayers are not enjoined."

The judge ordered the school district to instruct students and other speakers not to present a prayer, including barring them from asking audience members to stand, bow their heads, join in prayer, or say "Amen." The judge said the student speakers could discuss their personal religious beliefs.

The school district appealed to the U.S. Court of Appeals for the 5th Circuit, in New Orleans, where it was supported by Texas Attorney General Greg Abbott and the Liberty Institute, which filed a brief on behalf of Medina Valley High valedictorian Angela Hildenbrand.

On Friday, a three-judge panel of the 5th Circuit issued a short opinion and order dissolving Judge Biery's TRO and preliminary injunction.

"We are not persuaded that plaintiffs have shown that they are substantially likely to prevail on the merits, particularly on the issue that the individual prayers or other remarks to be given by students at graduation are, in fact, school-sponsored," the panel said in its unanimous order in Schultz v. Medina Valley Independent School District.

The fact that the lawsuit would continue was likely little comfort to the family challenging the graduation prayers, and the Express-News reported that Corwyn Schultz, a senior at the high school, did not attend his graduation. Among those offering prayers during the ceremony were Hildenbrand, the valedictorian, and state Rep. John V. Garza, a Republican from San Antonio, who reportedly said, "The judge of all judges commands us to pray."   
  
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